

TAB

Material Relating to Foreign Assistance Act Limitations
On Intelligence Activities

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A

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The Senate and House versions of the Foreign Assistance bill each prohibit the expenditure under any Act of appropriated funds for non-collection type foreign operations ("covert actions") unless and until the President makes a finding which is reported to congressional committees.

While the provisions are similar, the House version specifies that the Foreign Affairs and Foreign Relations Committees shall receive these reports.

The House Foreign Affairs Committee report finds such a reporting requirement to that committee consistent with its newly obtained special oversight of "intelligence activities related to foreign policy."

Thus, it appears that two additional committees will be added to the four committees in the Congress currently receiving information on these sensitive and delicate operations.

The Senate version uses the modifier "appropriate" which according to the legislative history developed on the Senate floor, would permit oral reporting and discretion and security needed to protect this sensitive information.

While the legislative history developed in the House and the Senate on the necessity of security is clear, there is no specific language in the provision clearly safeguarding such information and limiting access to it.

Under House Rule XI, clause 27(c) "all committee records, data and files. . . ." and such records shall be the property of the House and all Members of the House which have access to such records."

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B

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

14 NOV 1974

Mr. James L. Frey
Deputy Associate Director, International Affairs
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Frey:

This is in response to the November 12th request of Mr. Arnold Donahue of your office for the views of this Agency on a proposed new section in the Foreign Assistance Act of 1961 which limits intelligence activities, specifically proposed new section 660 in H.R. 17234 and section 661 in S. 3394. Both of these sections have the identical basic purpose of limiting expenditures by or on behalf of the Central Intelligence Agency for clandestine operations other than those for intelligence collection.

With respect to preferences in language between the two versions:

(a) The language "operations in foreign countries" in section 660, as opposed to "covert action operations" as used in section 661 is preferable in the interest of not admitting to covert action in United States Statute and eliminating definitional uncertainty. If there is an opportunity for the insertion of totally new language, it is recommended that the wording be changed to "pursuant to section 102(d)(5) of the National Security Act of 1947 (50 U.S.C. 403)."

(b) With respect to the Presidential finding to remove the bar to expenditures, it would be preferable to use the language of section 660, "important to the national security of the United States," rather than the more restrictive language "vital to the defense of the United States" of section 661. A strict interpretation of the latter phrase may require a finding involving the territorial integrity of

(c) Regarding the contents of the report to be submitted to the Congress by the President, the language of section 661 is preferable, as the details to be reported are modified by the word "appropriate" which would provide flexibility for omitting extremely sensitive details.

(d) With respect to the committee recipient of the President's findings and report, the language of section 661 limiting such reporting to committees "presently having jurisdiction to monitor and review" intelligence activities is preferred.

(e) With respect to subsection "(b)" the preference is for the language of section 660 because it does not contain the words "covert action" as does section 661.

It can be argued that the proposed new section merely implements agreements made between the Executive branch and congressional leaders. In fact, the proposed new section goes far beyond these agreements as we understand them. Therefore, we would not want the above-stated preference in language to be construed as an Agency position that the Administration should support such a new section. To the contrary, it is believed that strong arguments against such a position exist and they include:

(a) The foreign assistance legislation is an inappropriate vehicle for such a provision of law.

(b) No committee hearings have been held on the proposition and it is doubted that its implications have been adequately studied.

(c) A provision which in effect requires reporting of the type of programs covered by the proposed new section is included in legislation introduced by Senator Stennis and Representative Nedzi, which has received Administration support and on which the Director has testified before the Nedzi Intelligence Subcommittee. Both of these bills are before committees having legislative jurisdiction over the subject matter.

(d) There are movements in both the Senate and the House which make such a new section somewhat redundant, this includes Chairman Stennis' invitation to the Majority and Minority Leader, both members of the Foreign Relations Committee, to participate in sessions of the Senate Armed Services Intelligence Subcommittee; and an amendment to the Rules of the House which grants the House Foreign Affairs Committee certain jurisdiction with respect to intelligence activities affecting foreign policy.

(e) The proposal could impinge upon Presidential power not shared with the Congress. Whether the President fulfills such Constitutional responsibility privately or covertly, using the CIA as a mechanism, should make no difference and certainly does not eliminate the necessity for speed, dispatch, and secrecy to enhance the prospects of success.

In addition to the proposed new section dealing with limitation on intelligence activities, this Agency also has a complaint with sections of S. 3394 imposing ceilings on U. S. Government obligations in Indochina. These sections bar the obligation of any funds in excess of the stated ceilings, "for the purpose of carrying out directly or indirectly any economic or military assistance, or any operation, project, or program of any kind." This language is so broad that it could be construed to encompass normal U. S. Government activities, such as embassy staffing and intelligence collection.

Similar language was used in the Fiscal 1972 Defense Appropriations Act to limit U. S. expenditures in Laos, but to eliminate the overbreadth problem the House-Senate conferees included language in the conference report to make it clear that:

"... the conferees wish to make it understood that it is not the intent to place a ceiling on, or reduce, funds available for vital non-assistance-related activities in programs which must be carried on irrespective of assistance-related operations in Laos, such as the normal expenses incurred by the State Department."

in the operation of its embassy and such normal and usual expenses of the embassy as would be incurred in peacetime in the absence of any military, paramilitary, or economic assistance programs of any kind."

I appreciate this opportunity to express our views on this bill, and trust they will be given due consideration.

Sincerely,

SIGNED ?

George L. Cary
Legislative Counsel

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

3 DEC 1974

The Honorable John C. Stennis, Chairman
Committee on Armed Services
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

It is understood that S. 3394 contains certain language bearing on the operations of this Agency:

"No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency or any other agency of the United States Government for the conduct of operations in foreign countries pursuant to section 102 (d)(5) of the National Security Act of 1947 (50 U. S. C. 403), other than operations intended solely for obtaining necessary intelligence. Notwithstanding the foregoing limitation, the President may authorize and direct that any operation in a foreign country be resumed, or that any other operation in a foreign country be initiated, and funds may be expended therefor, if, but not before, he (1) finds that such operation is important to the national security and (2) transmits an appropriate report of his finding, together with an appropriate description of the nature and scope of such operation, to the committees of the Congress having jurisdiction to monitor and review the intelligence activities of the United States Government.

"(b) The provisions of subsection (a) of this section shall not apply during military operations by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution.
(Public Law 93-148)."

As you know, this language is similar but not identical to the language proposed in your own bill, S. 2597:

"(5) to perform such other functions and duties related to foreign intelligence affecting the national security as may be specifically directed from time to time by the Council and reported to the Congress in such manner and in accordance with such procedures as the Congress may establish to insure effective legislative oversight with due recognition of essential security requirements."

It is my understanding that the proposed language above, S. 3394, "committees of the Congress having jurisdiction to monitor and review the intelligence activities of the United States Government," refers to the long-established procedures of the Congress by which our activities are reviewed by subcommittees of the Appropriations and Armed Services Committees. It is my position that the arrangements for oversight of this Agency must be determined by the Congress, but I make a strong recommendation that this be handled in a manner reflecting the sensitivity and difficulty of keeping secret some of these delicate matters. The current procedure has worked well since the inception of this Agency, and as you know, my own agreements with you are to provide this kind of information to you. If the above language is construed to require exposure beyond the scope determined by the long-standing tradition of the Senate or by a new procedure adopted by the Senate with full consideration of the need to protect these secrets, I question this language in the Foreign Assistance Act and suggest that the matter might better be handled through the proposal made by you in S. 2597 after due hearings and discussion on this subject.

Since the reporting requirements under S. 3394 are imposed upon the President, the statements above should not be interpreted as representing the President's views on this matter.

Sincerely,

SIGNED

W. E. Colby

Director

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S. 3394

LIMITING INTELLIGENCE ACTIVITIES

SEC. 25. Chapter 3 of part III of the Foreign Assistance Act of 1961, as amended by sections 23(a) and 24 of this Act, is further amended by adding at the end thereof the following new section:

"SEC. 661. LIMITATIONS UPON INTELLIGENCE ACTIVITIES.--(a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency or any other agency of the United States Government for the conduct of operations in foreign countries pursuant to section 102(d)(5) of the National Security Act of 1947 (50 U.S.C. 403), other than operations intended solely for obtaining necessary intelligence. Notwithstanding the foregoing limitation, the President may authorize and direct that any operation in a foreign country be resumed, or that any other operation in a foreign country be initiated, and funds may be expended therefor, if but not before, he (1) finds that such operation is important to the national security, and (2) transmits an appropriate report of his finding, together with an appropriate description of the nature and scope of such operation, to the committees of the Congress having jurisdiction to monitor and review the intelligence activities of the United States Government.

"(b) The provisions of subsection (a) of this section shall not apply during military operations by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution."

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H. R. 17234

REIMBURSABLE DEVELOPMENT PROGRAMS AND
LIMITING INTELLIGENCE ACTIVITIES

SEC. 27. The Foreign Assistance Act of 1961 is amended by adding at the end of part III the following new sections:

"SEC. 600. LIMITATION ON INTELLIGENCE ACTIVITIES.—(a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives.

"(b) The provisions of subsection (a) of this section shall not apply during military operations initiated by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution."